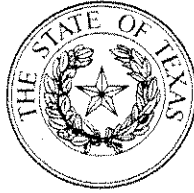


State Office of Administrative Hearings



Cathleen Parsley
Chief Administrative Law Judge

August 9, 2013

Les Trobman, General Counsel
Texas Commission on Environmental Quality
P.O. Box 13087
Austin Texas 78711-3087

Re: **SOAH Docket No. 582-13-1825; TCEQ Docket No. 2012-0478-PST-E;
Executive Director of the Texas Commission on Environmental Quality v.
Aman & Brothers LLC d/b/a Convenient Corner**

Dear Mr. Trobman:

The above-referenced matter will be considered by the Texas Commission on Environmental Quality on a date and time to be determined by the Chief Clerk's Office in Room 201S of Building E, 12118 N. Interstate 35, Austin, Texas.

Enclosed are copies of the Proposal for Decision and Order that have been recommended to the Commission for approval. Any party may file exceptions or briefs by filing the documents with the Chief Clerk of the Texas Commission on Environmental Quality no later than August 29, 2013. Any replies to exceptions or briefs must be filed in the same manner no later than September 9, 2013.

This matter has been designated **TCEQ Docket No. 2012-0478-PST-E; SOAH Docket No. 582-13-1825**. All documents to be filed must clearly reference these assigned docket numbers. All exceptions, briefs and replies along with certification of service to the above parties shall be filed with the Chief Clerk of the TCEQ electronically at <http://www10.tceq.state.tx.us/epic/efilings/> or by filing an original and seven copies with the Chief Clerk of the TCEQ. Failure to provide copies may be grounds for withholding consideration of the pleadings.

Sincerely,

A handwritten signature in cursive script that reads "Roy G. Scudday".

Roy G. Scudday
Administrative Law Judge

RGS/ap
Enclosures
cc: Mailing List

STATE OFFICE OF ADMINISTRATIVE HEARINGS

AUSTIN OFFICE
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Austin, Texas 78701
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SERVICE LIST

AGENCY: Environmental Quality, Texas Commission on (TCEQ)
STYLE/CASE: AMAN & BROTHERS LLC DBA CONVENIENT CORNER
SOAH DOCKET NUMBER: 582-13-1825
REFERRING AGENCY CASE: 2012-0478-PST-E

STATE OFFICE OF ADMINISTRATIVE HEARINGS	<u>ADMINISTRATIVE LAW JUDGE</u> ALJ ROY SCUDDAY
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REPRESENTATIVE / ADDRESS	PARTIES
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AMAN & BROTHERS, LLC

SOAH DOCKET NO. 582-13-1825
TCEQ DOCKET NO. 2012-0478-PST-E

EXECUTIVE DIRECTOR OF THE	§	BEFORE THE STATE OFFICE
TEXAS COMMISSION ON	§	
ENVIRONMENTAL QUALITY,	§	
Petitioner	§	
v.	§	OF
	§	
AMAN & BROTHERS LLC D/B/A	§	
CONVENIENT CORNER,	§	
Respondent	§	ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

I. INTRODUCTION

The Executive Director (ED) of the Texas Commission on Environmental Quality (TCEQ or Commission) seeks to assess \$2,635 in administrative penalties against Aman & Brothers LLC d/b/a Convenient Corner (Respondent) for violations of Texas Water Code (Code) § 26.3475(a) and (c)(1), and 30 Texas Administrative Code (TAC) §§ 334.50(b)(1)(A) and (b)(2). Simply stated, the ED alleges that Respondent failed to test line leak detectors and product piping at least once per year for performance and operational liability and failed to monitor tanks (release detection) for releases at a frequency of at least once every month.

The Administrative Law Judge (ALJ) concluded that the ED established that Respondent committed the violations. The Commission should find that the violations occurred and assess Respondent an administrative penalty of \$2,635, order Respondent to pursue corrective action, and issue the attached proposed order.

II. PROCEDURAL HISTORY AND JURISDICTION

The hearing convened on July 11, 2013, before ALJ Roy G. Scudday in the William P. Clements Building, 300 West 15th Street, Fourth Floor, Austin, Texas. ED was represented by Kari Gilbreth, Attorney, Litigation Division. Devinder S. Toor appeared on behalf of Respondent. The record closed on the date of the hearing.

Jurisdiction was proved as found in the order dated February 28, 2013. Undisputed procedural facts are set out in findings in the Proposed Order.

III. DISCUSSION

A. Violations

Respondent owns and operates a convenience store and gasoline station (Facility) located at 302 North 3rd Street, Wortham, Freestone County, Texas. On February 24, 2011, TCEQ contract investigator Isaac Foss conducted an inspection of the Facility and discovered that Respondent had violated rules and statutes within the Commission's jurisdiction as follows:

Respondent failed to have the pressurized piping tested annually for tightness;

Respondent failed to have the line leak detectors tested annually; and

Respondent failed to monitor for releases at least once per month.

Under Code § 7.051, the Commission is authorized to assess an administrative penalty against a person who violates a provision of the Code within the Commission's jurisdiction, or a rule adopted or an order or permit issued thereunder. The penalty may not exceed \$10,000 per day of violation of the applicable sections of the Code.¹ Additionally, the Commission may order the violator to take corrective action.²

In this case, Respondent is alleged to have violated Code § 26.3475(a) and (c)(1), and 30 TAC §§ 334.50(b)(1)(A) and (b)(2), which are statutes and rules within the Commission's authority. Thus, the Commission has jurisdiction over Respondent and authority to assess penalties and order the corrective action requested by the ED. Further, the State Office of Administrative

¹ Code § 7.052(c) (version in effect February 24, 2011).

² Code § 7.073.

Hearings (SOAH) has jurisdiction over this matter as reflected in the Conclusions of Law that are in the attached Proposed Order.

Respondent does not dispute that it had not performed the required tests or properly documented its release monitoring, but asserts that it subsequently came into compliance in regard to all the violations after they were brought to its attention.

B. Penalties

The total administrative penalty sought for the two violations is \$2,635. The base penalty is \$2,500. In addition, the costs avoided by Respondent in not conducting the annual testing, \$135, was added to the base penalty, for a total penalty amount of \$2,635. The proposed penalty was calculated under terms of the Commission's 2002 Penalty Policy.³ Because Respondent subsequently complied with the testing requirements, the ED is no longer seeking corrective action for that violation. Respondent did not dispute the overall accuracy of the ED's calculation of the penalty, but argued that some consideration should be given to the fact that it came into compliance once the violations were brought to its attention, as well as to Respondent's ability to pay such a substantial penalty. However, Respondent did not offer any evidence on its inability to pay the proposed penalty.

Based on the above analysis, the ALJ concludes that a penalty of \$2,635 is consistent with the factors in Code § 7.053, which must be addressed in assessing an administrative penalty, and with the Commission's 2002 Penalty Policy.⁴ The penalty recommended by the ALJ is commensurate with the severity of the violations found to have occurred and is reasonable.

³ ED Ex.4, *Penalty Policy of the Texas Commission on Environmental Quality*, September 2002, RG-253.

⁴ Under Code § 7.053, the ED must consider the following factors:


- the history and extent of previous violations;
- the degree of culpability, including whether the violation was attributable to mechanical or electrical failures and whether the violation could have been reasonably anticipated and avoided;
- the demonstrated good faith, including actions taken by the alleged violator to rectify the cause of the violation and to compensate affected persons;
- economic benefit gained through the violation;
- the amount necessary to deter future violations; and
- any other matters that justice may require.

C. Corrective Action

In addition, the ED established that the following corrective action should be taken by Respondent:

- a. Install and implement a release detection method for the underground storage tank (UST) system, in accordance with 30 TAC § 334.50; and
- b. Install and implement a release detection method for the pressurized piping associated with the UST system, in accordance with 30 TAC § 334.50.

SIGNED August 9, 2013.



ROY G. SCUDDAY
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**AN ORDER Assessing Administrative Penalties Against
Aman & Brothers LLC d/b/a Convenient Corner
TCEQ DOCKET NO. 2012-0478-PST-E
SOAH DOCKET NO. 582-13-1825**

On _____, the Texas Commission on Environmental Quality (Commission or TCEQ) considered the Executive Director's Second Amended Report and Petition (EDSARP) recommending that the Commission enter an enforcement order assessing administrative penalties against Aman & Brothers LLC d/b/a Convenient Corner (Respondent). Roy G. Scudday, an Administrative Law Judge (ALJ) with the State Office of Administrative Hearings (SOAH), conducted a public hearing on this matter on July 11, 2013, in Austin, Texas, and presented the Proposal for Decision.

The following are parties to the proceeding: Respondent, the Commission's Executive Director (ED), and the Office of Public Interest Counsel (OPIC).

After considering the ALJ's Proposal for Decision, the Commission makes the following Findings of Fact and Conclusions of Law.

I. FINDINGS OF FACT

1. On February 24, 2011, a contract environmental investigator for TCEQ conducted an investigation of Respondent's convenience store and gas station located at 302 N. 3rd Street,

Wortham, Freestone County, Texas. The investigator observed several violations of the TCEQ rules regarding underground storage tanks.

2. On November 1, 2012, the ED issued the Executive Director's Report and Petition (EDPRP) in accordance with Texas Water Code (Code) § 7.054, alleging, among other items, that Respondent violated Code § 26.3475(a) and(c)(1) and 30 Texas Administrative Code (TAC) § 334.50(a)(1)(A) and (b)(2), specifically for failing to have the pressurized piping tightness tested annually; failing to have the line leak detectors tested annually; and failing to monitor for releases at least once per month.
3. The ED recommended the imposition of an administrative penalty in the amount of \$2,635.00, and corrective action to bring the site into compliance.
4. The proposed penalty of \$2,635.00 represents the base penalty for the violations plus the costs avoided by not performing the required tests.
5. An administrative penalty of \$2,635.00 takes into account culpability, economic benefit, good faith efforts to comply, compliance history, release potential, and other factors set forth in Code § 7.053 and in the Commission's 2002 Penalty Policy.
6. On January 31, 2013, Respondent requested a contested case hearing on the allegations in the EDPRP.
7. On December 20, 2012, the case was referred to SOAH for a hearing.
8. On January 10, 2013, the Commission's Chief Clerk issued notice of the preliminary hearing to all parties, which included the date, time, and place of the hearing, the legal authority under which the hearing was being held, and the violations asserted.
9. At the preliminary hearing that was held on February 28, 2013, the ED established jurisdiction to proceed.
10. On June 26, 2013, the ED issued the EDSARP.
11. The hearing on the merits was conducted on July 11, 2013, in Austin, Texas, by ALJ Roy G. Scudday.
12. Respondent was represented at the hearing by Devinder S. Toor, President of Respondent. The ED was represented by Kari Gilbreth, attorney in TCEQ's Litigation Division.
13. Respondent has corrected the testing violations so corrective action regarding those violations is no longer necessary. Corrective action regarding release detection is still needed.

II. CONCLUSIONS OF LAW

1. Under Code § 7.051, the Commission may assess an administrative penalty against any person who violates a provision of the Code within the Commission's jurisdiction or of any rule, order, or permit adopted or issued thereunder.
2. Under the version of Code § 7.052 in effect on the date of the violations, a penalty may not exceed \$10,000 per violation, per day, for the violations at issue in this case.
3. Respondent is subject to the Commission's enforcement authority, pursuant to Code § 7.002.
4. As required by Code § 7.055 and 30 TAC §§ 1.11 and 70.104, Respondent was notified of the EDPRP and of the opportunity to request a hearing on the alleged violations, and the penalties and the corrective actions proposed therein.
5. As required by Texas Government Code §§ 2001.051(1) and 2001.052; Code § 7.058; 1 TAC § 155.27, and 30 TAC §§ 1.11, 1.12, 39.25, 70.104, and 80.6, Respondent was notified of the hearing on the alleged violations and the proposed penalties and corrective action.
6. SOAH has jurisdiction over matters related to the hearing in this matter, including the authority to issue a Proposal for Decision with Findings of Fact and Conclusions of Law, pursuant to Texas Government Code, ch. 2003.
7. Based on the above Findings of Fact Respondent violated Code § 26.3475(a) and(c)(1) and 30 TAC § 334.50(a)(1)(A) and (b)(2).
8. In determining the amount of an administrative penalty, Code § 7.053 requires the Commission to consider several factors including:
 - Its impact or potential impact on public health and safety, natural resources and their uses, and other persons;
 - The nature, circumstances, extent, duration, and gravity of the prohibited act;
 - The history and extent of previous violations by the violator;
 - The violator's degree of culpability, good faith, and economic benefit gained through the violation;
 - The amount necessary to deter future violations; and
 - Any other matters that justice may require.
9. The Commission has adopted a Penalty Policy setting forth its policy regarding the computation and assessment of administrative penalties, effective September 1, 2002.

10. Based on consideration of the above Findings of Fact, the factors set out in Code § 7.053, and the Commission's Penalty Policy, the ED correctly calculated the penalties for the alleged violations, and a total administrative penalty of \$2,635.00 is justified and should be assessed against Respondent, and the corrective action proposed by the ED regarding release detection should be implemented.

NOW, THEREFORE, IT IS ORDERED BY THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY, IN ACCORDANCE WITH THESE FINDINGS OF FACT AND CONCLUSIONS OF LAW, THAT:

1. Aman & Brothers LLC d/b/a Convenient Corner is assessed an administrative penalty in the amount of \$2,635.00 for violation of Code § 26.3475(a) and(c)(1) and 30 TAC § 334.50(a)(1)(A) and (b)(2). The payment of this administrative penalty and Aman & Brothers LLC's compliance with all the terms and conditions set forth in this Order will completely resolve the matters set forth by this Order in this action. The Commission shall not be constrained in any manner from requiring corrective actions or penalties for other violations that are not raised here. All checks submitted to pay the penalty assessed by this Order shall be made out to "Texas Commission on Environmental Quality." Administrative penalty payments shall be sent with the notation "Re: Aman & Brothers LLC d/b/a Convenient Corner; Docket No. 2012-0478-PST-E" to:

Financial Administration Division, Revenues Section
Attention: Cashier's Office, MC 214
Texas Commission on Environmental Quality
P.O. Box 13088
Austin, Texas 78711-3088
2. Within 30 days from the effective date of the Commission Order, Respondent shall:
 - a. Install and implement a release detection method for the underground storage tank (UST) system, in accordance with 30 TAC § 334.50; and
 - b. Install and implement a release detection method for the pressurized piping associated with the UST system, in accordance with 30 TAC § 334.50.
3. Within 45 days after the effective date of the Commission Order, Respondent shall submit written certification to demonstrate compliance with Corrective Action Ordering Provision Nos. 2(a) and (b). The certification required by these Corrective Action Ordering Provisions shall be accompanied by detailed supporting documentation, including photographs, receipts,

and/or other records, shall be notarized by a State of Texas notary public, and shall include the following certification language:

“I certify under penalty of law that I have personally examined and am familiar with the information submitted and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.”

The certification shall be submitted to:

Order Compliance Team
Enforcement Division, MC 149A
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

with a copy to:

Frank Burleson, Waste Section, Manager
Waco Regional Office
Texas Commission on Environmental Quality
6801 Sanger Avenue, Suite 2500
Waco, Texas 78710-7826

4. The Executive Director may refer this matter to the Office of the Attorney General of the State of Texas (OAG) for further enforcement proceedings without notice to Respondent if the Executive Director determines that Respondent has not complied with one or more of the terms or conditions in this Commission Order.
5. All other motions, requests for entry of specific Findings of Fact or Conclusions of Law, and any other requests for general or specific relief, if not expressly granted herein, are hereby denied.
6. The effective date of this Order is the date the Order is final, as provided by 30 TAC § 80.273 and Texas Government Code § 2001.144.
7. As required by Code § 7.059, the Commission’s Chief Clerk shall forward a copy of this Order to Respondent.

8. If any provision, sentence, clause, or phrase of this Order is for any reason held to be invalid, the invalidity of any provision shall not affect the validity of the remaining portions of this Order.

Issue Date:

**TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY**

Bryan W. Shaw, Ph.D., Chairman for the Commission